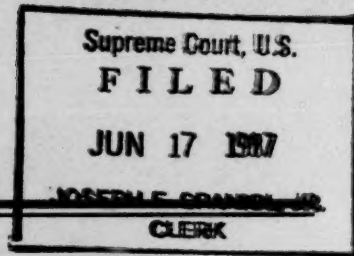


(6)

No. 86-1638



IN THE
Supreme Court of the United States
OCTOBER TERM, 1986

LEE ENTERPRISES, INCORPORATED, a Delaware Corporation
and DONALD SCHWENNESEN,
Petitioners,

v.

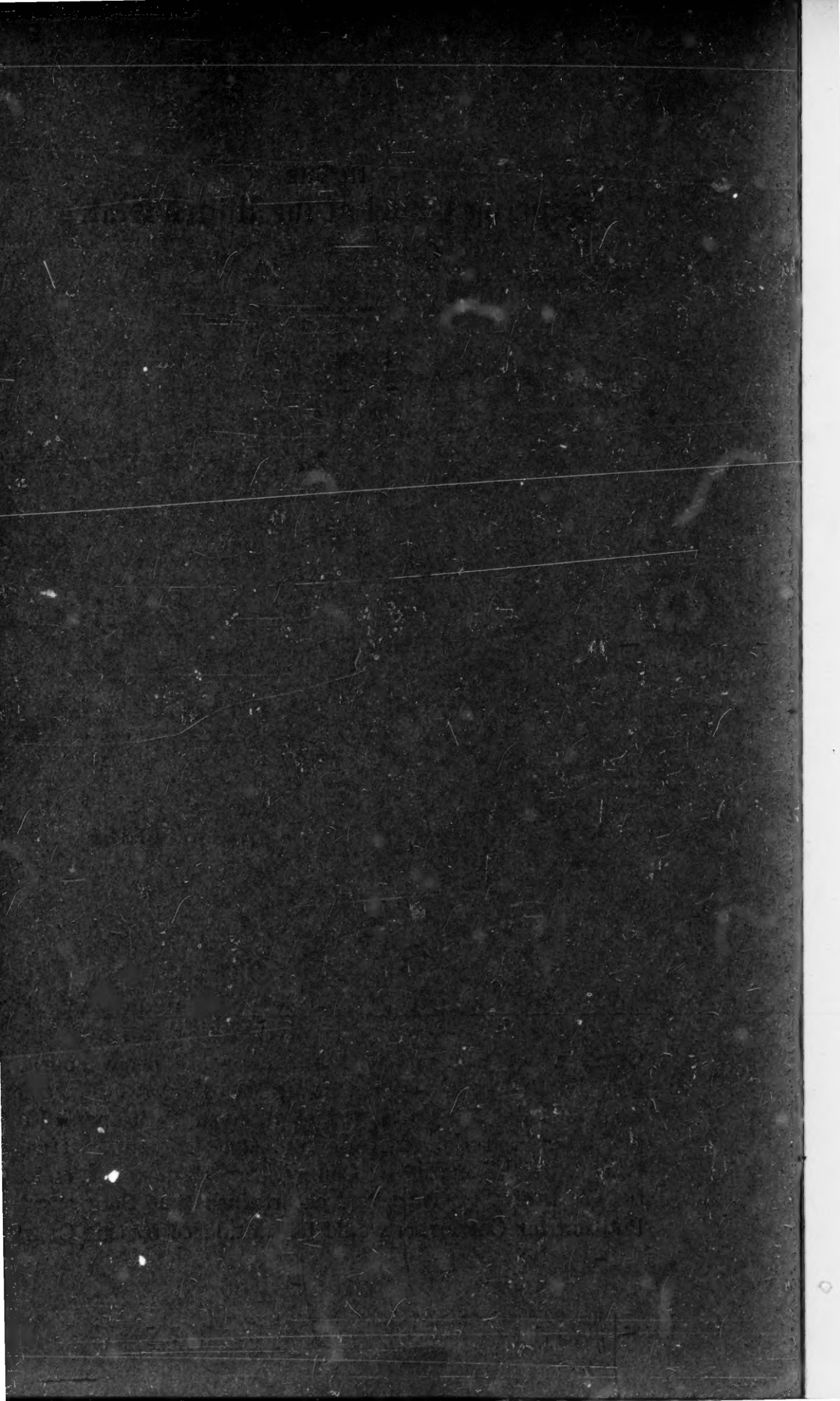
WARREN E. SIBLE,
Respondent.

On Petition for a Writ of Certiorari to the
Supreme Court of Montana

**RESPONDENTS SUPPLEMENTAL BRIEF
IN OPPOSITION**

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**RESPONDENT'S SUPPLEMENTAL BRIEF
IN OPPOSITION**

I. INTRODUCTION

Petitioners filed a Reply Brief. As an appendix to that Brief, Petitioners have introduced material to this Court which was not part of the record below considered by the jury, trial court or the Montana Supreme Court. Counsel for Respondent received Petitioner's Reply Brief and the Appendix on June 15, 1987. Upon receipt of the material, Counsel for Respondent called the Clerk of this Court and ascertained that Petitioner's Petition for Certiorari would be considered by this Court

on June 18, 1987. Respondent wishes to apologize to this Court for the form of this Brief, but, due to the necessity of sending this document from Bigfork, Montana to Washington, D.C. for printing and the time constraints of presenting it to this Court before the June 18th hearing, Respondent's Counsel has been forced to operate under extremely adverse circumstances.

The sole purpose of this Supplemental Brief shall be to inform this Court of Petitioners' attempt to introduce evidence which was not before the jury, trial court or Supreme Court of Montana. It is Respondent's position that the Petitioners' Appendix to their Reply Brief should not be considered by this Court, at this time.

II. ARGUMENT

Petitioners have filed an Appendix with their Reply Brief which, for the first time in this case, purports to be a transcription of reporter Schwennesen's notes relative to the article. This Court should not consider the Appendix at this time for the following reasons:

1. Respondent Schwennesen has not been examined on the notes and the effect of his testimony has not been considered by a jury, the trial court or the Supreme Court of Montana.

2. The transcription of these notes was accomplished by Petitioner Schwennesen, without an opportunity to examine him about the transcription process.

3. Even if the notes were admissible at this level, Respondent still would be entitled to examine Schwennesen about the notes and his pre-publication knowledge, engage in additional discovery based upon new information and persons mentioned in the notes, and have a lower court jury determine the effect of this pre-publication knowledge and notes on the actual malice question.

4. By introducing this material at this Court's level, the Petitioners are attempting to transform this Court into a trial tribunal.

III. CONCLUSION

It is respectfully submitted that this Court should disregard Petitioners' Appendix to their Reply Brief and any argument based on the Appendix's material. It is further respectfully submitted that Petitioners' attempt to introduce this material—i.e., Schwennesen's notes—demonstrates that a retrial is necessary to obtain a complete record for this Court's review, and that the Petition For Certiorari is premature.

Dated this 17th day of June, 1987.

Respectfully submitted,

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